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51 UNITED STATES DISTRICT COURT

52 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

53 CHASOM BROWN, WILLIAM BYATT,
54 JEREMY DAVIS, CHRISTOPHER
55 CASTILLO, and MONIQUE TRUJILLO,
56 individually and on behalf of all similarly
57 situated,

58 Plaintiffs,
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60 v.
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62 GOOGLE LLC,
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64 Defendant.

65 Case No. 5:20-cv-03664-LHK-SVK

66 **JOINT SUBMISSION IN RESPONSE TO
67 DKT. 143, 163 RE: SEALING PORTIONS
68 OF APRIL 29, 2021 HEARING
69 TRANSCRIPT**

70 Referral: Hon. Susan van Keulen, USMJ

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74 Case No. 5:20-cv-03664-LHK-SVK

75 JOINT SUBMISSION RE: SEALING PORTIONS OF APRIL 29, 2021 HEARING TRANSCRIPT

1 May 19, 2021

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen
4 San Jose Courthouse
5 Courtroom 6 - 4th Floor
280 South 1st Street
5 San Jose, CA 95113

6 Re: Joint Submission in Response to Dkt. 143, 163 re: Sealing Portions of April 29,
2021 Hearing Transcript
7 *Brown v. Google LLC*, Case No. 5:20-cv-03664-LHK-SVK (N.D. Cal.)

8 Dear Magistrate Judge van Keulen:

9 Pursuant to Your Honor's April 28, 2021 Order on Google's Administrative Motion to
10 Seal Courtroom for April 29, 2021 Discovery Hearing (Dkt. 143), and May 13, 2021 Order
11 Extending Time for Submitting Proposed Redactions to Transcript of April 29, 2021 Hearing
12 (Dkt. 163), Plaintiffs and Google LLC ("Google") jointly submit this statement regarding sealing
13 portions of the April 29, 2021 hearing transcript.

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1 Google respectfully seeks to seal 29 partial lines (less than one page) of the 42-page April 29,
 2 2021 Hearing Transcript (“Transcript”), because those lines contain Google’s confidential and
 3 proprietary information regarding highly sensitive features of Google’s internal systems and
 4 operations that Google does not share publicly, including: (1) the various types of data logs
 5 maintained by Google; and (2) the various types of Google’s internal identifiers/cookies and their
 6 proprietary functions. The Court previously granted Google’s motions to seal the same information it
 7 seeks to seal now, including in Dkt. Nos. 124, 152, and 160 and in *Calhoun v. Google LLC*, No. 5:20-
 8 cv-05146-LHK-SVK, Dkt Nos. 124, 154 (N.D. Cal. Mar. 3, 2021). On the same bases, the Court also
 9 sealed the April 29, 2021 hearing. (Dkt. 143). This information is highly confidential and should be
 10 protected.

11 This Administrative Motion pertains to the following information contained in the Transcript:

12 Document	13 Portions to be Filed Under Seal	14 Party Claiming Confidentiality
15 April 29, 2021 Hearing Transcript	16 Portions Highlighted in Yellow at 6:17, 6:19, 7:6, 7:7, 7:10, 9:22, 12:3, 12:6-9, 12:11-12, 13:23, 15:10, 17:20-21, 18:8-9, 22:14-15, 22:16-20, 26:9, 26:18, 26:19	17 Google

18 The parties conferred on the proposed redactions to the Transcript. Plaintiffs believe there is
 19 no basis for any redactions, but they nonetheless do not oppose Google’s motion to seal.

20 **I. LEGAL STANDARD**

21 The common law right of public access to judicial records in a civil case is not a constitutional
 22 right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978)
 23 (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have
 24 refused to permit their files to serve as reservoirs of . . . sources of business information that might
 25 harm a litigant’s competitive standing”). The right to access is further diminished where, as here, a
 26 party seeks to prevent the disclosure of information discussed during a hearing on a non-dispositive
 27 discovery motion; rather than the more stringent “compelling reasons” standard, a party seeking to
 28 seal materials in these circumstances must make only a “particularized showing” of “good
 cause.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006). A “strong

1 presumption of access” does **not** apply to sealed discovery documents attached to non-dispositive
 2 motions; a “party seeking disclosure must present sufficiently compelling reasons why the sealed
 3 discovery document should be released.” *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307
 4 F.3d 1206, 1213 (9th Cir. 2002). Even at trial, sealing is appropriate when the information at issue
 5 constitutes “competitively sensitive information,” such as “confidential research, development, or
 6 commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at
 7 *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir.
 8 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of
 9 information, including, but not limited to, trade secrets or other confidential research, development, or
 10 commercial information”).

11 **II. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”
 12 STANDARD AND SHOULD ALL BE SEALED**

13 Although the materials that Google seeks to seal here easily meet the higher “compelling
 14 reasons” standard, the Court need only consider whether these materials meet the lower “good cause”
 15 standard. Courts have repeatedly found it appropriate to seal documents that contain “business
 16 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Good
 17 cause to seal is shown when a party seeks to seal materials that “contain[] confidential information
 18 about the operation of [the party’s] products and that public disclosure could harm [the party] by
 19 disclosing confidential technical information.” *Digital Reg of Texas, LLC v. Adobe Sys., Inc.*, 2014
 20 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive
 21 standing may be sealed even under the “compelling reasons” standard. *See e.g. Icon-IP Pty Ltd. v.*
 22 *Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information
 23 “is appropriately sealable under the ‘compelling reasons’ standard where that information could be
 24 used to the company’s competitive disadvantage”) (citation omitted).

25 Here, the Transcript comprises confidential information regarding highly sensitive features of
 26 Google’s internal systems and operations that Google does not share publicly. Specifically, this
 27 information provides details related to the various types of Google’s internal identifiers/cookies and
 28 their proprietary functions and the various types of event-level data logs maintained by Google. Such

1 information reveals Google’s internal strategies, system designs, and business practices for operating
 2 and maintaining many of its important services while complying with legal and privacy obligations.

3 Public disclosure of the above-listed information would harm Google’s competitive standing it
 4 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 5 Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone is
 6 a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-
 7 02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
 8 sensitive business information related to Google’s processes and policies to ensure the integrity and
 9 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
 10 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
 11 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
 12 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
 13 motion to seal as to “internal research results that disclose statistical coding that is not publically
 14 available”).

15 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 16 compromise Google’s data log systems and/or internal identifier systems. Google would be placed at
 17 an increased risk of cyber security threats, and data related to browsing of users could similarly be at
 18 risk. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013)
 19 (sealing “material concern[ing] how users’ interactions with the Gmail system affects how messages
 20 are transmitted” because if made public, it “could lead to a breach in the security of the Gmail
 21 system”). The security threat is an additional reason for this Court to seal the identified information.
 22 The information Google seeks to redact, including the functionalities of its data logs, internal
 23 identifiers/cookies and their functionalities, and internal data structures, is the minimal amount of
 24 information needed to protect its internal systems and operations from being exposed to not only its
 25 competitors but also to nefarious actors who may improperly seek access to and disrupt these systems
 26 and operations. The “good cause” rather than the “compelling reasons” standard should apply but
 27 under either standard, Google’s sealing request is warranted.

28 **III. CONCLUSION**

1 For the foregoing reasons, Google respectfully requests that the Court seal the identified
2 portions of the Transcript.

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Respectfully,

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ATTESTATION OF CONCURRENCE

I am the ECF user whose ID and password are being used to file this Joint Submission. Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in the filing of this document.

Dated: May 19, 2021

Andrew H. Schapiro
Counsel on behalf of Google LLC